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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/981,360	12/18/1997	Kari Kirjavainen	U 011574-0	3410

140 7590 10/25/2005

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NEW YORK, NY 10023

EXAMINER

BRUENJES, CHRISTOPHER P

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 10/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

08/981,360

Applicant(s)

KIRJAVAINEN ET AL.

Examiner

Christopher P. Bruenjes

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 1-12, 15 and 18-22.

Claim(s) withdrawn from consideration: 16 and 17.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see continuation sheet.

12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). 20051010

13. ☐ Other: _____.

ADVISORY ACTION

WITHDRAWN REJECTIONS

1. The 35 U.S.C. 112 rejections of claims 1-12, 15, and 18-22 of record in the Office Action mailed August 2, 2005, Pages 2-3 Paragraph 3, have been withdrawn if Applicant's amendments in the Paper filed October 10, 2005 are entered for the purposes of appeal.

REPEATED REJECTIONS

2. The 35 U.S.C. 102 rejections of claims 1-2, 5-6, 8, 15, 18-19, and 21-22 as anticipated by Maimets are repeated for the reasons set forth in the previous Office Actions mailed March 15, 2005, Pages 4-6 Paragraph 7, and August 2, 2005, Pages 3-4 Paragraph 4. Changing "self" to "itself" has merely clarified the scope of the claims and has not changed the interpretation of the claims from the interpretation presented in the August 2, 2005 Office Action.

3. The 35 U.S.C. 103 rejections of claims 3-4 over Maimets in view of Bast are repeated for the reasons set forth in the previous Office Action mailed March 15, 2005, Pages 7-8 Paragraph 8.

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4. The 35 U.S.C. 103 rejections of claims 7, 9 and 20 over Maimets in view of Stanley are repeated for the reasons set forth in the previous Office Action mailed March 15, 2005, Pages 8-10 Paragraph 9.

5. The 35 U.S.C. 103 rejection of claim 10 over Maimets in view of Stanley and Donuiff is repeated for the reasons set forth in the previous Office Action mailed March 15, 2005, Pages 10-12 Paragraph 10.

6. The 35 U.S.C. 103 rejection of claim 11 over Maimets in view of Cook is repeated for the reasons set forth in the previous Office Action mailed March 15, 2005, Pages 12-13 Paragraph 11.

7. The 35 U.S.C. 103 rejection of claim 12 over Maimets in view of Hunter is repeated for the reasons set forth in the previous Office Action mailed March 15, 2005, Pages 13-14 Paragraph 12.

ANSWERS TO APPLICANT'S ARGUMENTS

8. Applicant's arguments regarding the 35 U.S.C. 112 rejections of claims 11 and 12 of record have been considered but are moot since the rejections have been withdrawn.

9. Applicant's arguments regarding the 35 U.S.C. 102 rejections of claims 1-2, 5-6, 8, 15, 18-19, and 21-22 as anticipated by Maimets have been fully considered but they are not persuasive.

In response to Applicant's argument that Maimets fails to teach that the foamed plastic adhering tie layer "is extruded simultaneously with the innermost layer against the base layer, the limitation is a process limitation and no evidence has been provided showing that this particular process produces a patentably different article from Maimets. The porous gasket of Maimets that is formed of a foamed plastic and is bonded to the innermost and base layers does not require an adhesive layer. The conduit taught by Maimets includes a foamed plastic layer bonded directly to a base layer and innermost layer without any intervening adhesive. Therefore, the conduit of Maimets has the same final structure as the claimed invention. Once the examiner provides a rationale tending to show that the claimed product appears to be the same to that of the prior art,

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although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product.

In response to Applicant's argument that US Patent 4,015,033 teaches a difference between extruding simultaneously and other methods of bonding, this Patent does not provide sufficient evidence that the claimed product is materially different than the prior art product. Specifically, US Patent 4,015,033, compares sequential and simultaneous extrusion methods only, and states that physical bonding is improved in simultaneous extrusion over sequential extrusion. However, this patent does not provide evidence that the product produced by methods other than simultaneous extrusion are unobviously different products such as evidence of unexpected results, instead the patent only provides a statement that adhesion between layers formed by simultaneous extrusion is generally better than sequential extrusion in situations where the two polymers have broadly similar melt characteristics. Therefore, US Patent number 4,015,033 does not provide evidence establishing an unobvious difference between the claimed product and the prior art product as required to overcome a reference that is only different with regards to a process limitation.

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In response to Applicant's argument that meltingly extruded simultaneously as claimed is "interbonded by interfusion" and is therefore a structural limitation and not a process limitation, the structure implied by the process steps is being considered. The process step of extruding two layers simultaneously does not necessarily lead one of ordinary skill in the art to expect distinctive structural characteristics to the final product, especially in light of the fact that depending on the melt characteristics of the polymers used, the co-extruded layers may not have any substantial interfusion, as taught in US Patent 4,015,033 in column 2, lines 19-22. The final product as claimed contains a base layer, a tying foamed layer, and an innermost layer, in which the tying foamed layer is bonded to the innermost layer without any intervening layer or material. This is also true of the final product taught in Maimets. Furthermore, Maimets teaches an embodiment in which a thermoplastic material is coated onto the sleeve heated to form a bond between the layers of the sleeve by interfusion (col.19, 1.41-51). Maimets teaches that the layers of the sleeve bonded by interfusion caused by the thermoplastic material meltingly fusing the layers together includes any of the grout containing material layers as described previously in the Patent, including the grout carrying foam pad (col.20, 1.46-58).

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10. Applicant's arguments regarding the 35 U.S.C. 103 rejections of claims 3-4, 7, 9-12, and 20 over Maimets in view of Bast, Stanley, Donuiff, Cook, and/or Hunter of record have been fully considered but are not persuasive for the same reasons as presented above with regards to the 35 U.S.C. 102 rejections.

Conclusion

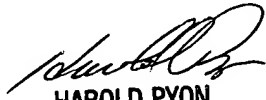
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P. Bruenjes whose telephone number is 571-272-1489. The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christopher P Bruenjes
Examiner
Art Unit 1772
CPB
October 19, 2005


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

10/21/05